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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re Rosario Q., Jr. , A Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Maria G.,

Defendant and Appellant.

B208454

(Los Angeles County
Super. Ct. No. CK66031)

APPEAL from an order of the Superior Court of Los Angeles County,
Debra Losnick, Referee. Affirmed.

Kimberly A. Knill, under appointment by the Court of Appeal, for Defendant and
Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant Country
Counsel and Melinda White Svec, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Maria G. (mother) appeals an order by the juvenile court terminating her parental rights with respect to her biological son Rosario Q., Jr. (Rosario). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Rosario's Biological Family*

Rosario was born in July 2006. For the first five months of his life he lived with mother, his father Rosario Q., Sr. (father), and his siblings Angelina C. (born in December 1996), Rudy Q. (born in September 1999), Tanya Q. (born in July 2001), Eddie Q. (born in August 2002), and Jimmy Q. (born in January 2004). Rosario's brother Jose C., Jr. (born August 1993) lived with his maternal grandparents.¹ While living with his biological family, Rosario slept with five of his siblings on a mattress in a walk-in closet. The home was infested with roaches and rodents.

Mother and father lived together for many years but were not married. The couple had a history of domestic violence and drug use. Father had been convicted of violent crimes and was previously a member of a gang. Mother was arrested on at least three occasions and convicted of theft in 1996.

2. *Rosario's Detention*

On December 7, 2006, officers from the Long Beach Police Department executed a search warrant at Rosario's home. The police found illegal drugs, drug paraphernalia, and weapons within reach of the children. Father was arrested. The children, including Rosario, were detained by Los Angeles County Department of Children and Family Services (Department).

¹ Jose C., Sr. is the father of Jose and Angelina. Rosario Q., Sr. is the father of Rudy, Jimmy, Tanya, Eddie and Rosario.

3. *Dependency Petition*

On December 12, 2006, the Department filed a juvenile dependency petition seeking an order declaring Jose, Angelina, Rudy, Tanya, Eddie, Jimmy and Rosario dependents of the court. The Department alleged that the juvenile court had jurisdiction over the children under Welfare and Institutions Code section 300, subdivisions (a)(serious physical harm) and (b)(failure to protect).² On the same day the petition was filed, the juvenile court found that there was a prima facie case for detaining the children.

On October 23, 2007, the petition was sustained. Pursuant to section 361.5, subdivision (e),³ the juvenile court did not order any family reunification services for mother or father.

4. *Incarceration of Mother and Father*

In January 2007, father and mother were convicted of various crimes. Father was sentenced to 6 years in state prison. Mother was sentenced to 3 years of felony probation and 60 days of community service. On February 1, 2007, mother was arrested for selling narcotics. On February 13, 2007, mother pled guilty to selling a controlled substance (Health & Saf. Code, § 11352, subd. (a)), and was sentenced to 3 years in state prison.

5. *Rosario's Prospective Adoptive Parents*

Rosario has hemophilia and related health problems. On December 27, 2006, Rosario was hospitalized in connection with problems arising from his hemophilia. While in the hospital, he was treated by Ashley M., a registered nurse in the hospital's pediatric hemophilia and oncology department.

² Unless otherwise specified, all subsequent section references are to the Welfare and Institutions Code.

³ Section 361.5, subdivision (e)(1) provides: "If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child."

On April 6, 2007, Rosario was discharged from the hospital and released in the care of Ashley and her husband Mark M. Due to his health condition, Rosario needed caretakers of great devotion.⁴ Ashley and Mark rose to the occasion and provided excellent care for Rosario as his foster parents. Rosario thrived in his new environment. He also developed an emotional bond with Ashley and Mark. After a few months, he began calling Ashley “mama” and Mark “dada.”

Ashley and Mark advised the court that they wished to adopt Rosario and, on December 11, 2007, requested to be designated as de facto parents. That request was granted on April 22, 2008.

6. *Appointment of Guardians of Rosario’s Siblings*

Beginning on December 7, 2006, Rosario’s siblings were in the care and custody of various caretakers other than their parents. On February 19, 2008, the juvenile court appointed guardians for Rosario’s siblings without terminating mother’s parental rights. The maternal grandmother was appointed the guardian for Jose, Rudy and Jimmy. Tanya was placed with the paternal grandmother. Angelina was placed with a maternal cousin. Yolanda A. was appointed Eddie’s guardian.⁵

7. *Sibling Visits*

Between April of 2007 and March of 2008, the children of mother and father participated in frequent visitations with each other. Rosario attended most of these visitations. The children would usually meet at a restaurant for about two hours. Rosario’s siblings also visited him while he was in the hospital in the summer of 2007. Rosario’s siblings interacted and played with him in a positive manner. At times, however, Rosario’s siblings played too roughly with Rosario in light of his medical condition. On one occasion, Rosario hit his head on a table while being chased by his

⁴ Rosario required physical therapy and factor VIII infusions every other day for one year, and every Monday, Wednesday, and Friday until six years of age.

⁵ The record does not indicate what family relationship, if any, Yolanda has with Eddie.

siblings. Ashley quickly gave Rosario a factor VII infusion to prevent serious medical consequences.

8. *Termination of Mother's Parental Rights*

On June 4, 2008, the juvenile court held a hearing on whether to terminate mother's and father's parental rights with respect to Rosario. Mother and father testified that they opposed the termination. Rosario's siblings, through their counsel, also opposed the termination. The Department, Ashley and Mark, and Rosario, through their respective counsel, supported the termination. The juvenile court ordered that mother's and father's parental rights be terminated. In reaching its decision, the court found that it was detrimental for Rosario to be returned to his parents and that it was likely that Rosario would be adopted by Ashley and Mark.

CONTENTIONS

Mother contends that the juvenile court erred in terminating her parental rights with respect to Rosario because it did not apply the so-called sibling exception of section 366.26, subdivision (c)(1)(B)(v).

DISCUSSION

Section 366.26, subdivision (c)(1) provides: "If the court determines . . . by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. . . . A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, . . . or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights. Under these circumstances, the court shall terminate parental rights unless either of the following applies:

“[¶] . . . [¶]

“(B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

“[¶] . . . [¶]

“(v) There would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.”

Here, mother does not contest the juvenile court’s finding that Rosario was likely to be adopted. Mother also does not challenge the court’s continued removal of Rosario from her custody and the court’s denial of reunification services to her pursuant to section 361.5, subdivision (e)(1). Instead, mother argues that the court “erred by refusing to apply the sibling exception to termination of parental rights under section 366.26, subdivision (c)(1)(B)(v).” We review the juvenile court’s decision under a substantial evidence standard. (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 535.)⁶

In applying the sibling exception, we must first determine whether terminating parental rights would substantially interfere with the sibling relationship by evaluating the nature and extent of the relationship. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 951-952.) “If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship.” (*Id.* at p. 952.)

⁶ Other courts have applied an abuse of discretion standard. (See e.g. *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1342, 1351.) As a practical matter, the differences between the two standards in this context are not very significant. (*Id.* at p. 1351.) We would affirm the juvenile court’s order terminating mother’s parental rights under either standard.

In this case, there was more than substantial evidence supporting a finding that the relationship between Rosario and his siblings was not sufficiently significant to cause Rosario detriment on termination. Rosario lived with his siblings for only the first five months of his life. The brevity of this period alone is significant. (*In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017 [“It goes without saying that the longer two children live together, the greater the chance they will establish a strong sibling bond.”].) Further, there is no evidence of any significant common experiences that Rosario shared with his siblings. This is not surprising in light of Rosario’s age.

Mother places great emphasis on the sibling visits Rosario participated in. However, in a report dated April 22, 2008, the Department assessed the impact of Rosario’s visits with his siblings in the following manner: “Rosario does not have a close bond with his siblings. He does interact with them during the visits, but shows no emotional upset when the visits end.”

“Moreover, even if a sibling relationship exists that is so strong that its severance would cause the child detriment, the court then weighs the benefit to the child of continuing the sibling relationship against the benefit to the child adoption would provide.” (*In re L. Y. L.*, *supra*, 101 Cal.App.4th at pp. 952-953.) There was substantial evidence that the balance here tips toward the benefit to Rosario of adoption. Rosario has spent most of his young life with his prospective adoptive parents, Ashley and Mark, and has developed a strong bond with them. Both prospective parents have provided excellent care for Rosario. Rosario has also benefited from Ashley’s expertise in caring for Rosario’s serious health problems. There is every reason to believe that Rosario will continue to thrive if he is adopted by Ashley and Mark. On the other hand, it is far from clear that mother will turn her life around sufficiently to become a fit parent for Rosario and her other children after she is released from prison. Under these circumstances, it is in Rosario’s best interest to stay on the path toward adoption, even if that results in the termination of his relationship with his siblings.

DISPOSITION

The juvenile court's order terminating mother's parental rights with respect to Rosario is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.